

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart M – ACEP-WRE Enrollment and Acquisition

528.120 Overview

- A. This subpart provides guidance on administrative activities, procedures, and policy related to the enrollment and acquisition of 30-year contracts, 30-year easements, and permanent easements.
- B. The enrollment and acquisition process proceeds after NRCS determines that the landowner and the land are eligible, and after the onsite visits, including ranking and preparation of the preliminary wetland reserve plan of operations (WRPO), have been completed. Upon NRCS's execution of Form NRCS-LTP-31, "Agreement for the Purchase of Conservation Easement" (APCE), or Form NRCS-LTP-40, "Agreement to Enter Contract for 30-Year Land Use" (AECLU), the acres are considered enrolled in ACEP-WRE. (See Subpart U, "Exhibits," for the ACEP-WRE business process flow chart exhibit.)

528.121 Selection for Enrollment

A. General

- (1) Applications are accepted on a continuous basis. The State Conservationist may establish one or more application cutoff dates for evaluation, ranking, and funding consideration of those applications received before the cutoff date. The State Conservationist may also implement a process to select applications for funding on a continuous basis if they meet threshold requirements established by the State Conservationist, with input from the State Technical Committee (STC).
- (2) Once the application materials have been submitted to the State office, all eligible applications will be listed in rank order based on enrollment type. Based on funding allocations, the State Conservationist will select the applications that can be funded starting with the highest-ranked application.
- (3) If the State does not have sufficient funds to approve the highest-ranked application on the unfunded list, the State may skip to the next-highest-ranked application for which it has sufficient funds. The State Conservationist may choose to fund lower-ranked applications in unique circumstances, as identified by the State Conservationist in consultation with the STC (subpart L, section 528.113).
- (4) All eligible applications not selected or considered during a given evaluation period will be carried over to subsequent evaluation periods through the term of the Farm Bill in which the application was submitted, except for those cancelled or determined ineligible. Eligibility determinations must be updated for deferred applications considered for funding in a subsequent fiscal year.
- (5) If appraisals will be used in determining the fair market value of the land, these appraisals may be secured in the fiscal year preceding the fiscal year when the easement or 30-year contract will actually be selected for funding. The effective date of the appraisal must be within 12 months of the date the offer (APCE or AECLU) is executed by the landowner and NRCS, unless a shorter useful life is identified by the review appraiser. Once the offer is accepted and executed by all required parties, the appraisal will not expire. If an approved appraisal has an effective date older than 12 months before the offer is executed by all parties, the appraisal is expired and a new, approved appraisal is required before an offer can be

extended to the landowner. (See appraisal and appraisal review guidance in 440-CPM, Part 527, Subparts E and F)

B. Letter of Tentative Selection (Required Only for Projects Needing an Individual Appraisal)

If NRCS determines that an application tentatively selected for funding will require an appraisal, the landowners will be sent a letter of tentative selection by certified mail with return receipt requested. This letter is required only for projects needing an individual appraisal.

- (i) The letter will clearly explain that this tentative selection does not bind NRCS or the United States to enroll the proposed project in ACEP-WRE, nor does it bind the landowner to continue with enrollment in the program. The letter will also provide the list of materials that the landowner will need to provide to NRCS before the appraisal can begin. (See Subpart U, “Exhibits,” for sample letter of tentative selection.)
- (ii) The landowner’s acceptance of the tentative selection is required prior to NRCS proceeding with acquiring an appraisal and will be indicated by the landowner’s providing the required materials. (See Subpart U, “Exhibits,” for checklist of items to provide appraiser.) Once it has received an acceptable appraisal, NRCS may proceed with making an offer of enrollment to the landowners, as provided in subsection C, below.

C. Offer of Enrollment

Upon selection of an application for funding, NRCS will send the landowner an offer of enrollment letter. The wording of this letter will depend upon selected application’s enrollment type, the actions necessary for the application to be considered enrolled in the program, and the amount of funds to be obligated. (See Subpart U, “Exhibits,” for sample offer of enrollment letters.)

- (i) **Thirty-Year Contracts on Acreage Owned by Indian Tribes**
 - For 30-year contract enrollments, the letter will clearly indicate that the application has been selected for enrollment and that NRCS is making an offer to enroll the land in a 30-year contract for the compensation amount indicated in the letter. If the enrolled land is Tribal trust land held by the Bureau of Indian Affairs (BIA), the BIA superintendent will also be notified of the contract compensation figures from NRCS. (See Subpart U, “Exhibits,” for sample offer of 30-year contract enrollment letter.)
 - The letter will indicate that continuing the enrollment process is contingent upon the applicant returning the AECLU (Form NRCS-LTP-40) document attached to the letter with all appropriate signatures, including any necessary Tribal council resolutions accepting the offer within the time period specified in the letter. This will signify that the landowner accepts the offered compensation. Generally, the landowner is allowed 30 calendar days to sign and return the document. This deadline can be adjusted by the State Conservationist, as necessary.
 - Once the AECLU is returned and signed by the State Conservationist, the property will be considered enrolled in ACEP-WRE and funds will be obligated for the 30-year contract compensation amount. If the AECLU is not signed and returned within the required time period, the application will be cancelled.
- (ii) **Easements**
 - The offer of enrollment letter will clearly indicate that the application has been selected for enrollment and that NRCS is making an offer to purchase the easement for the compensation amount indicated on the APCE (Form NRCS-LTP-31) provided with the letter. (See Subpart U, “Exhibits,” for sample offer of easement enrollment letter.)

- The letter will also indicate that continuing the enrollment process is contingent upon the landowner returning the APCE with all appropriate signatures within the time period specified in the letter. If the APCE is not returned within the required time period, the application will be cancelled. Generally, the landowner is allowed 15 calendar days to sign and return the document. This deadline can be adjusted by the State Conservationist, as necessary. Once the APCE is returned and signed by the State Conservationist, the property will be considered enrolled in ACEP-WRE and funds obligated for the easement acquisition. If the APCE is not signed and returned within the required time period, the application will be cancelled.

Note: If the landowner is going to secure the easement boundary survey in accordance with the procedure in section 528.123B, then the survey funds may also be obligated at this time.

D. Agreement Execution and Extension

For all enrollment types, the original expiration date of the agreement (APCE or AECLU) will be August 31 of the year following the fiscal year the agreement is entered into. Prior to the original expiration date, if both parties agree to mutually extend the agreement, the agreement can be extended one time for a period until August 31 of the year no later than 2 fiscal years following the fiscal year the agreement is entered into. (See Subpart U, “Exhibits,” for a sample APCE extension letter.)

- (i) If the agreement is to be extended, the one-time extension must be signed by the landowner and NRCS prior to the expiration of the agreement. NRCS will not sign the extension until the fiscal year after the agreement is originally signed.

For example, if an agreement is entered into in FY 2015, the original expiration date would be August 31, 2016, and the extended expiration date would be August 31, 2017. NRCS will not sign the extension prior to September 30, 2015.

- (ii) States must enter the appropriate years into the agreement; however, the date of August 31 may not be changed. No additional or alternative extension lengths are authorized. States must inform landowners that these standard requirements may not be changed and are a condition of participation in ACEP-WRE. Standardized expiration dates and extension lengths assist NRCS in tracking expiration dates and extension deadlines, reduce the risk and incidences of improper payments on expired agreements, and inform the landowners from the outset of the full extent and limitations of the agreement. The extension of the agreement requires the mutual agreement of both NRCS and the landowner.
- (iii) NRCS is under no obligation to grant the one-time extension of the agreement and the extension of the agreement is not a program entitlement issue.

E. NRCS Delegation of Authority for Enrollment

The State Conservationist may delegate, in writing, the authority to sign the APCE or AECLU and any subsequent documents authorizing adjustments to these obligation amounts to the Assistant State Conservationist with responsibility for easement programs. No further delegation of this authority is allowed.

F. Expedited Delivery of Notification of Offer of Enrollment

To expedite the enrollment process, NRCS may deliver the offer of enrollment letter and the APCE or AECLU for signature to the landowner in person. NRCS will document in the case file the date the offer of enrollment letter and associated documents were delivered to the landowner

in person. To minimize the potential for disputes, it is recommended that the landowner sign an acknowledgement confirming the date they received the offer of enrollment and APCE or AECLU for signature.

G. Applications Not Selected

- (1) At the end of the fiscal year, applicants not selected for funding will be notified that their application will be deferred to the next fiscal year unless the applicant notifies NRCS in writing that their application should be cancelled.
 - (i) Landowners may be notified by a letter, personal contact, or email; notification must be documented in the case file, indicating a landowner's desire to remain on the list or to cancel their application.
 - (ii) The notification will inform landowners wishing to cancel their application to notify NRCS promptly and in writing. The written request for cancellation and NRCS letter or contact documentation should be maintained with the application. (See Subpart U, "Exhibits," for a sample deferral letter.)
- (2) If applications are carried forward into the next fiscal year, a new landowner eligibility determination must be completed.
 - (i) In the national easement tracking tool (currently NEST), these will be considered promoted applications to the new fiscal year and numbered in a manner that facilitates the tracking of funds specific to that transaction.
 - (ii) Applications may be carried forward for the term of the Farm Bill under which the application was submitted; if the landowner wishes to participate after this time period has expired, a new application must be submitted.

H. Transfer or Sale of Enrolled Land

- (1) Any property enrolled in ACEP-WRE that is sold or transferred (including the participant entering into a contract or purchase agreement to sell the land subject to the ACEP-WRE offer) prior to the easement being perfected or the 30-year contract being executed will result in the APCE or AECLU being cancelled and the acres removed from enrollment unless the new landowner meets the eligibility requirements in subpart K for the fiscal year in which the agreement is transferred and is willing to accept the terms and conditions for the enrollment.
- (2) In particular, the new landowner must request an eligibility determination, including submission of any necessary waiver requests, and, if determined to be eligible, they must be willing to execute any contract transfer documents or new agreements or contracts.
- (3) If the new landowner is not able to establish eligibility at the time of transfer, sale, or purchase agreement, the enrollment will be cancelled, the acres removed from enrollment, and the new landowner may submit a new application for participation in the future, at which time a new eligibility determination must be made.

I. Withdrawal of Offer by NRCS

Prior to execution by the United States of the warranty easement deed or 30-year contract, NRCS may withdraw the land from enrollment at any time due to the lack of availability of funds, inability of landowner to provide clear title or sufficient legal access, sale of the land, or for other reasons. The offer to the landowner is void if not executed by the landowner within the time specified. States must enter the expiration or cancellation date of the agreement in NEST.

J. Failure to Convey and Cost Recovery

- (1) Except for reasons beyond the control of the landowner (as determined by NRCS), if the landowner fails to convey the easement or 30-year contract, the landowner will be in default of the terms and conditions of the APCE or AECLU and may be required to pay NRCS the

amount of costs incurred by NRCS for surveys and all other actions taken in furtherance of the agreement or contract.

- (2) The State Conservationist has the discretion to determine the extent of costs to be recovered and whether any portion of those costs will be waived. This determination will be based on an evaluation of the landowner's reason for nonconveyance and NRCS funds expended in an effort to perfect the easement or execute the 30-year contract. For example, the landowner demonstrated a good-faith effort by working extensively with a lien holder but the lien holder was unwilling to subordinate the lien.

528.122 Determining Easement or 30-Year Contract Compensation

A. General

- (1) The requirements contained in this section and exhibits are mandatory for all ACEP-WRE easement or 30-year contract acquisitions by NRCS. No modifications to these requirements are permitted without prior written approval from the Deputy Chief for Programs.
- (2) The basis for the compensation offer for an easement or 30-year contract enrollment will be the lowest of the following:
 - (i) The fair market value of the land using either of the following:
 - A Uniform Standards for Professional Appraisal Practices (USPAP) appraisal (see section 528.122C)
 - An areawide market analysis (AWMA) (see section 528.122B)
 - (ii) The geographic area rate cap (GARC) (see section 528.122D)
 - (iii) An amount voluntarily offered by the landowner (see section 528.122E)
- (3) In order to ensure compliance with the statutory provisions regarding easement and 30-year contract compensation, **States must determine the fair market value of the land, the GARC value, and the landowner offer (if any) for each transaction prior to enrollment.** If the landowner makes an offer, such offer must be provided in writing by the landowner. The written landowner offer must be uploaded into NEST with the document type "Landowner Offer" and physical copy must be placed prominently in the case file. The easement compensation value must not exceed the fair market value of the land.
- (4) The State Conservationist must determine whether to use an AWMA or a USPAP appraisal to determine fair market value. Only one method may be used to determine the fair market value of the offered area.
- (5) Obtaining an AWMA is the preferred method for determining fair market value of the land, if sufficient enrollment numbers are anticipated. The fair market values derived from the AWMA provide a primary source of information for use in the development of the GARC. Use of an AWMA to determine fair market value and subsequent development of the GARC allows easement or contract compensation values to be reliably estimated early in the process. This enables NRCS to inform potential participants of the compensation values early in the evaluation process and reduces the time spent with applicants who will not accept the compensation offer. In addition, if an applicant withdraws from the program, an offer can immediately be extended to the next eligible applicant on the list.
- (6) The compensation amount for less-than-permanent enrollments, including easements with durations limited by State law, 30-year easements or 30-year contracts, must not exceed 75 percent of the easement compensation value determined for a permanent easement according to this subpart. Less-than-permanent enrollments may not be of sufficient duration to achieve full restoration, and do not provide permanent protection of the functions and values obtained.

B. Fair Market Value of the Land Using an Areawide Market Analysis

- (1) State Conservationists may obtain one or more AWMA's to establish the fair market value of various lands that are typically enrolled within the State. States may establish multiple market areas to be analyzed, based on counties or other sub-State regions, land uses, land quality categories, soils or crop types, or other considerations, such as development pressure and residual recreational value.
- (2) To obtain an AWMA, the State Conservationist must first define the market area or areas to be analyzed, based on similar features, including but not limited to the following:
 - (i) Land uses
 - (ii) Land productivity
 - (iii) Land unit size
 - (iv) Soil types and features
 - (v) Types and amounts of improvements
 - (vi) Potential influence of other factors, such as development pressure
 - (vii) General topography and natural features
 - (viii) Location
 - (ix) Irrigation water rights
- (3) The AWMA results should provide fair market value for the types of land typically enrolled or eligible to be enrolled in ACEP-WRE in the NRCS-identified market areas.
- (4) The AWMA's will be completed by an independent real estate professional familiar with the area and land use types included in the market area or areas defined by NRCS. The AWMA is not to be completed by NRCS personnel. The AWMA specifications must be reviewed with the selected real estate professional, including specific types of land and land uses to be cited in the report based upon land typically enrolled in ACEP-WRE.
- (5) The AWMA must be completed in accordance with the specifications provided by NRCS. (See Subpart U, "Exhibits," for a sample ACEP-WRE AWMA scope of work.) The qualified independent real estate professional conducting the market analysis must provide a written report to the State Conservationist consistent with the requirements in the scope of work. The AWMA report must document—
 - (i) The region, market areas, development potential, and land use or land productivity categories and subcategories analyzed.
 - (ii) The actual sales data or economic data for each category and subcategory.
 - (iii) The source of the data.
 - (iv) The qualifications and experience of the qualified real estate professional who conducted the market analysis.
- (6) The AWMA areas or categories must be adequately specific and descriptive. For example, land use categories such as irrigated pastureland or irrigated cropland will result in more accurate data than a category of irrigated land used for both. For GARC's developed based on an AWMA, the description of the GARC areas or categories should be consistent with the associated AWMA categories.
- (7) NRCS will obtain the AWMA's through an appropriate procurement method and following proper contracting rules and procedures. Review and acceptance of the AWMA must be completed by an authorized official prior to submission to the EPD for approval. For the purposes of AWMA review, an authorized official is an NRCS employee who is not themselves and is not formally supervised or evaluated by any person authorized to process, negotiate, or approve any easement or 30-year contract that will use the AWMA results.
- (8) The State Conservationist must submit an electronic copy of the AWMA report and accompanying documentation, including the date the fair market values were reviewed with the State Technical Committee, to the Easement Programs Division's (EPD) director for final concurrence and approval. These will be submitted at the same time the GARC recommendations are submitted.

- (9) All fair-market-value determinations using AWMA's must be reviewed each enrollment fiscal year and have approval of the EPD director prior to being used in the enrollment process. If no significant changes are anticipated in the AWMA fair market values from the previous year, States may obtain a review and written statement from the original qualified real estate professional who prepared the previous year's AWMA documenting that the previous year's AWMA fair market values have not changed significantly (no more than plus or minus 10 percent) and are still valid. The statement must explain the process used by the qualified real estate professional to make the determinations. If it is confirmed and documented that there are no significant changes, the State Conservationist may request approval from the EPD director to use an extension to the prior fiscal year's AWMA rather than obtaining a new AWMA report for that fiscal year. The AWMA fair market values must remain the same and the applicable GARC values must remain at the same value or lower as the previous year. An AWMA may only be reviewed and extended for 1 fiscal year following the original AWMA report.

C. Fair Market Value of the Land, Using an Appraisal

- (1) USPAP appraisals may be used to determine fair market value of the land instead of AWMA. Use of individual appraisals may be warranted for reasons that may include but are not limited to the following:
 - (i) States with limited ACEP-WRE enrollment
 - (ii) Areas with limited enrollment within a State
 - (iii) Areas with significant complexity that do not allow for a more general evaluation—for example, property-by-property value differences due to water rights, or extreme variability in values over a small area due to development pressure
 - (iv) Land uses or areas not included in the market areas of the AWMA—for example, the property is geographically located within an AWMA market area (Smith County) but does not contain one of the analyzed land uses (offered area is irrigated cropland but only rangeland was included in the AWMA)
 - (v) Size of the property is significantly larger or smaller than the typical used to develop the AWMA values
 - (vi) Other special situations
- (2) Guidance for conducting appraisals and appraisal reviews is located in 440-CPM, Part 527, Subpart E and F.
- (3) If an individual appraisal is used to determine fair market value, a percentage GARC and not-to-exceed dollar value are still required.

D. Geographic Area Rate Caps (GARCs)

- (1) Each State Conservationist, in consultation with the State Technical Committee (STC), must adopt at least one GARC for his or her State.
 - (i) States may establish multiple GARCs based on counties or other sub-State geographic regions, land use or quality categories, corresponding AWMA areas, or other considerations, such as development pressure and residual recreational value.
 - (ii) The GARCs for each State should be set at a rate that does not overcompensate landowners and that encourages the enrollment of the types and classes of lands with superior restoration potential. **The GARCs should reflect the value that the State Conservationist determines to be fair compensation for the rights being acquired.** Although NRCS is acquiring a majority of the property rights associated with the land, the landowner still retains certain reserved rights; as a result, the GARCs will always be less than the fair market value as determined by the AWMA or appraisal.

- (2) In order to establish the GARCs, States should use the best readily-available information to determine fair compensation for the rights being acquired through the easement or contract. The best data source is the fair market value determined in the corresponding AWMA. Other data that should be used to develop the GARCs include the following:
- (i) Data sets of previously obtained ACEP-WRE appraisals
 - (ii) Local real estate market values, tax rates, and assessments
 - (iii) Location of the land
 - (iv) Soil types and productivity
 - (v) National, State, or local agricultural statistics
 - (vi) Local information about the value of land leases for the rights being acquired by the Federal government
 - (vii) Historic values accepted and rejected by landowners for program participation
 - (viii) Rates paid by other conservation easement programs that have similar purposes
 - (ix) Neighboring geographic areas
- Note:** GARCs must not have the effect of eliminating types or classes of lands on which the wetland and wildlife restoration potential is superior to other types or classes of lands enrolled in the State.
- (3) If AWMA are used to determine fair market value, specific GARC dollar values should be established that correspond to the AWMA categories and subcategories. If USPAP appraisals are used to determine fair market value, the GARCs must be set as a percentage of fair market value and must include a not-to-exceed dollar value. The GARCs must result in an easement compensation value that is fair compensation for the rights being acquired through the easement or 30-year contract.
- (4) The State Conservationist must document the following in writing:
- (i) The process used to determine the area for each GARC
 - (ii) The process and rationale used to determine the dollar or percent value of each GARC
 - (iii) The geographic area, development potential, land use, or land productivity categories considered
 - (iv) The corresponding GARC from adjacent states with an explanation of any significant (20 percent or more) differences
 - (v) The sources of the data
 - (vi) The date the proposed GARC values were reviewed with the State Technical Committee
 - (vii) For GARCs greater than \$5,000 per acre, an evaluation and justification of the ecological importance of enrolling these high-cost lands
- (5) For each fiscal year, the State Conservationist must submit an easement compensation proposal package that includes a discussion on the approaches used to obtain fair market values (AWMA, appraisals, or both), copies of any AWMA reports, the proposed GARCs, and the supporting GARC rationale documentation. The proposal must be submitted to the director of the EPD for final concurrence and approval. Easement compensation proposals will be evaluated on the following criteria:
- (i) Was there a logical, defensible, and well-documented process?
 - (ii) Was the AWMA procured from an independent real estate professional with experience in the market area?
 - (iii) Is the fair market value of the land greater than the GARC?
 - (iv) Were the results reviewed by the State Technical Committee?
 - (v) Were the results certified by the State Conservationist?
 - (vi) Were the GARC values consistent with neighboring areas or were there explainable differences?

Note: Neighboring GARC values with a variation greater than 20 percent will not be approved unless they are accompanied by a statement from the State Conservationists explaining why neighboring GARC values vary so greatly.

- (vii) For GARCs greater than \$5,000 per acre, is there a statement from the State Conservationist justifying the ecological importance of enrolling these high-value lands?
- (6) All easement compensation proposals must be updated each fiscal year and have the approval of the EPD director prior to being used in the enrollment process. Upon approval, States will publish the GARC values on the State Web site for informational purposes.

E. Landowner Offer

At any time during the application or prior to easement closing or contract execution, the landowner may voluntarily offer to accept a value less than is being offered by NRCS. If the landowner's offer is made at the time of application and ranking, this may enhance the probability of enrollment. A landowner's willingness to accept a lower easement or 30-year contract compensation amount will not automatically grant the landowner expedited access to the program, but will be factored into the overall application evaluation process. An offer to accept a lower compensation amount will be documented in writing with the landowner's signature or signatures and placed prominently in the case file.

F. Making an Offer

- (1) Once NRCS has calculated the appropriate easement or 30-year contract compensation value for a particular transaction, it may make an offer to an eligible landowner using the APCE or, for acreage owned by an Indian Tribe, the AECLU. The offer will be made based on the lowest of the following:
 - (i) The fair market value, as determined by the individual USPAP appraisal or AWMA
 - (ii) The GARC
 - (iii) The landowner's offer
- (2) States must document in the individual case file how the compensation value was determined for each individual offer. This documentation may include maps or tables and must identify the total acres, the number of acres of each applicable fair market value (FMV) or GARC category, the per acre values of each applicable FMV or GARC category, the total easement compensation value, and the total, weighted per acre easement value.
For example:

FMV/GARC Land Use	Acres of Land Use	GARC Per Acre Value	Easement Compensation Value
Irrigated Cropland	100	\$2,000	\$200,000
Forestland	100	\$500	\$50,000
Totals and Total Per Acre Value*	200	\$1,250	\$250,000

* The total, weighted per acre easement value is calculated by dividing the total acres into the total easement compensation value.

- (3) If a landowner offer is made, the documentation must include a determination that the landowner offer is lower than the fair market values and GARC values.
- (4) States must follow the most current easement acquisition internal controls policy prior to obligating funds for the agreement. Once an offer is made and accepted by the landowner, the fair market value and GARC values used to calculate the original offer will be used in any future adjustments. Compensation values will be based on the year of enrollment and will not

be recalculated using fair market values or GARC values from a subsequent year.

Adjustments to an accepted offer will only occur as a result of changes in surveyed or offered acres as described in paragraph G, or if the landowner makes a written offer that is lower than the amount originally agreed to.

G. Final Acreage and Compensation Amounts

- (1) Based upon the easement boundary survey (for an easement) or GPS survey (for a 30-year contract), NRCS will determine the final easement or 30-year contract acreage and compensation amount. If the surveyed acres are within 10 percent of the acreage estimated at the time the offer was made, the easement compensation value will be adjusted using the total per acre easement value (weighted per acre value) calculated at the time the offer was made. If the change in the surveyed acres is within the scope of the original agreement but is more than 10 percent of the originally estimated acreage, the fair market value determination must be reviewed, either through a revised appraisal report or based on the AWMA values from the year of enrollment (see 440-CPM, Part 527, Subpart E). The applicable GARCs from the year of enrollment will be applied to the revised fair market value determination.

Example 1: Within 10 percent change: 200 acres original offer, 220 acres final surveyed acreage

FMV/GARC Land Use	Acres of Land Use	GARC Per Acre Value	Easement Compensation Value
<i>Original Totals and Total Per Acre Value*</i>	200	\$1,250	\$250,000
Final Totals using Original Total Per Acre Value	220	\$1,250	\$275,000

Example 2: Greater than 10 percent change: 200 acres original offer, 230 acres final surveyed acreage

FMV/GARC Land Use	Acres of Land Use	GARC Per Acre Value	Easement Compensation Value
<i>Original Totals and Total Per Acre Value*</i>	200	\$1,250	\$250,000
Irrigated Cropland	110	\$2,000	\$220,000
Forestland	120	\$500	\$60,000
Final Totals and Revised Total Per Acre Value	230	\$1,217	\$280,000

- (2) This final easement or 30-year contract acreage (rounded to the nearest tenth of an acre) and the adjusted compensation amount will be documented on the final warranty easement deed or 30-year contract (rounded to the nearest dollar), the landowner's acceptance of which will be documented upon execution of those documents. Amendments to the APCE or AECLU and landowner signatures are not required to document adjustments to the acreage or compensation amount based on acreage changes due to surveys.
- (3) Guidance on obtaining easement boundary surveys is provided in section 528.123. Boundary surveys for 30-year contracts will be based on a GPS survey conducted by NRCS. NRCS will coordinate with the landowner to ensure that the appropriate acres are included in the survey area, and will review the 30-year contract boundary survey with the landowner ensure that it accurately and correctly delineates the area of enrollment

- (4) Upon determination of the final acreage and compensation amount, the State program manager will provide this information to the financial officer to ensure that the obligation will be adjusted in the Financial Management Modernization Initiative (FMMI), as necessary. States must conduct reviews of obligations and adjustments in accordance with the most current easement acquisition internal controls policy. (See Subpart U, “Exhibits,” for sample easement/contract compensation adjustment note to file.)
- (5) It is recommended that if the change in final acres differs by more than 10 percent of the originally estimated enrollment acreage, a copy of any acreage and easement compensation adjustment documentation should be provided to the landowner for their information.

528.123 Easement Boundary Survey

A. General

- (1) As an integral part of the easement acquisition process, the boundary of the proposed easement area must be delineated in a manner that is suitable for recording. The exact recording requirements will vary from State to State. At a minimum, NRCS policy, NRCS easement programs land survey specifications, and State code must be met.
- (2) **Easement boundary descriptions and easement boundary maps are based upon a legal land survey and are required for all easement transactions.** Knowing exactly where the recorded easement acres are located will assist NRCS with its monitoring, management, and enforcement responsibilities to protect the Federal property investment. Additionally, ingress and egress to the easement area will be described on the easement boundary survey.

Note: It is the landowner’s responsibility to provide a sufficient right of ingress and egress to the easement area, as described in subpart K. The landowner providing NRCS with sufficient ingress and egress to the easement site is a condition of land eligibility. Additionally, the fair market value of the land determined through an appraisal or AWMA includes an assumption that the land has sufficient legal access, therefore, NRCS will not provide any additional or separate payments for a route of ingress and egress.

- (3) Within 30 calendar days following recordation of the easement, the digitized boundaries and polygon attributes will be transmitted to the NRCS National Geospatial Center of Excellence (NGCE). This information must be transmitted to NGCE as easements are recorded. These digital layers will, in combination with others, support local, regional, and national program management and ecosystem planning. NGCE will load these digital layers into the national geospatial data base when received. (See Subpart U, “Exhibits,” for instructions for digitizing and transmitting easement boundaries.)

B. Procuring the Easement Boundary Survey

- (1) After the APCE has been signed by the landowner and NRCS, an easement boundary survey will be ordered. The easement boundary survey must be based upon a land survey conducted by a State-certified professional land surveyor. The surveys will be obtained using an appropriate procurement method and funds for easement boundary surveys must be obligated to budget object class 3214. Use of a blanket purchase agreement or indefinite delivery and indefinite quantity contract for easement boundary surveys is recommended.
- (2) In some cases, it may be more efficient or cost effective for the landowner to secure the easement boundary survey. If this option is used, the landowner must secure a written bid for the easement boundary survey from a State-certified and licensed professional surveyor that is based on the NRCS easement programs’ land survey specifications (See Subpart U, “Exhibits,” for land survey specifications). The funds should be obligated to the landowner as the vendor using a supplement to the APCE, these funds may be obligated at the time the

easement acquisition funds. (See Subpart U, “Exhibits,” for APCE supplement for landowners to procure easement boundary surveys.)

- (3) NRCS will ensure that all easement boundary surveys are completed and digitized according to the NRCS easement programs’ land survey specifications. NRCS will ensure that all easement boundary markers and witness posts with easement boundary signs are installed at the time the easement boundary survey is accepted as correct by NRCS.
- (4) The use of the NRCS easement programs’ land survey specifications is required unless a modification to the national specification is approved by the national ACEP-WRE manager. Use of these national specifications will ensure a consistent product nationally and allow for the most efficient uploading of data to the national ACEP-WRE boundary shapefile maintained by the NGCE.

Note: The easement boundary signs may be ordered free of charge from the NRCS National Publications and Forms Distribution Center-LANDCARE. These can be ordered online by visiting <https://nrcspad.sc.egov.usda.gov/DistributionCenter/> and typing “sign” in the “Enter keyword” box and then clicking the “search” button and selecting “Agricultural Conservation Easement Program - Wetland Reserve Easements Boundary Sign*”, by telephone by calling 1 (888) LANDCARE (1 (888) 526-3227) and pressing “2,” or by emailing nrcsdistributioncenter@ia.usda.gov. Please note on your order that these signs will be used in the ACEP-WRE. Signs may be shipped directly to the survey vendor or local USDA service center. All orders must include name, company, shipping address, email address, and contact telephone number.

C. Acceptance of Easement Boundary Survey

- (1) After the easement boundary survey is complete the surveyor must provide a preliminary survey submittal that is acceptable to NRCS in accordance with the land survey specifications. Upon receipt of an acceptable preliminary survey submittal, the NRCS representative, the landowner, and the surveyor, will conduct an on-site easement boundary field review to ensure that—
 - (i) The area delineated was the area that the landowner intended to place under the easement.
 - (ii) The area delineated was the area identified and agreed to by NRCS.
 - (iii) The access route is accurate and acceptable.
 - (iv) The easement boundary monuments and witness posts have been installed as required.
- (2) The on-site post-survey field review will be documented using the easement boundary survey field review memorandum to the file. A copy of the memorandum to the file may be provided to the landowner. (See Subpart U, “Exhibits,” for the easement boundary field review memorandum to the file.)
- (3) Following the NRCS review and receipt of an acceptable preliminary survey submittal and the completion of the on-site field review of the surveyed area, NRCS will instruct the surveyor to submit the final easement boundary survey materials to NRCS. NRCS will review the final boundary survey submittal to ensure that it accurately and correctly describes the area of enrollment and satisfies the requirements of the land survey specifications.
- (4) Payment for the easement boundary survey may only be issued after the on-site easement boundary field review is completed and the final survey submittal has been reviewed and approved by NRCS.
- (5) See section 528.122G for information on incorporating the final easement boundary survey information into the warranty easement deed.

528.124 Finalizing Preliminary Investigations for Easements and 30-Year Contracts

A. General

- (1) States will finalize title and environmental due diligence investigations prior to easement closing or 30-year contract execution to conclude preliminary investigations and make final recommendations for acquisition. These investigations must include a thorough examination of both unrecorded and recorded exceptions to the title and a limited phase I. These investigations are to determine whether any existing exceptions to the title, encumbrances, agreements, leases, easements, other clouds on the title, or other circumstances exist that would in any way undermine NRCS's capability to achieve the purposes of the program or exercise the rights being acquired through the warranty easement deed or 30-year contract.
- (2) Title review includes an examination of both recorded and unrecorded exceptions to the title of the offered area and will result in findings and recommendations that will be documented by NRCS on Form NRCS-LTP-23, "Certificate of Use and Consent," and the Form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession" and addenda.
 - (i) Recorded exceptions will be identified in the title search and underlying documents, typically provided by a closing agent; unrecorded exceptions will be identified during interviews with the landowner and onsite investigations.
 - (ii) A title search and underlying documents must be obtained and reviewed prior to obligating funds to the APCE or AECLU unless there are extenuating circumstances such as allocations provided with less than 45 business days remaining in the fiscal year. A thorough review of all exceptions must be completed prior to easement closing or 30-year contract execution.
 - (iii) Additional information on the title review process is provided in the subsections below and in the Subpart U, "Exhibits," on common real estate transaction terms and title exception guide.
- (3) At a minimum, States are required to complete a limited phase I prior to obligation of the easement or 30-year contract funds. The limited phase I must include an environmental records search, landowner interviews, and an onsite visit to view present conditions. All three must be completed prior to obligating funds to the APCE or AECLU, unless there are extenuating circumstances, such as allocations provided with less than 45 business days remaining in the fiscal year. The hazardous substance environmental record search must be obtained and reviewed prior to easement closing or 30-year contract execution.
 - (i) Should the limited phase I reveal issues requiring further investigation, States should complete this themselves or obtain from a qualified outside vendor, a full phase I environmental site assessment that meets the requirements of 40 CFR Part 312. A full phase I, when conducted and provided by qualified, non-NRCS personnel, will use financial assistance funds.
 - (ii) If, after the completion of the full phase I, it is determined that a phase II environmental site assessment or site remediation is necessary, the application will be determined ineligible. If an APCE or AECLU has been entered into, the agreement will be terminated pursuant to the general provisions of the agreement. The landowner will be informed of the determination and that the application will not be reconsidered until the landowner provides sufficient documentation that all necessary investigations have been completed and that the site has been fully remediated to allow for restoration, inundation, and management of the site consistent with the wetland restoration objectives of the program.

- (iii) NRCS will not close on an easement or execute a 30-year contract on property where hazardous substance concerns are identified and are determined by NRCS to pose an unacceptable risk or are sufficient to make restoration unfeasible.
- (4) States will finalize title and environmental due diligence investigations to determine impacts and document recommendations as to how to address any existing recorded or unrecorded exceptions to title or environmental due diligence issues. States will provide these findings and recommendations as part of the package requesting a title opinion from OGC, for easements, or EPD approval, for 30-year contracts, as described in the sections below.

B. Identifying Unrecorded Exceptions

- (1) Unrecorded exceptions include leases, claims, encumbrances, options, and other evidence that someone other than the landowner has an interest in the property. Information on these unrecorded exceptions will be found through interviews with the landowner or others parties associated with the property and through physical inspections of the property.
- (2) At the time of application and prior to entering into an agreement, States must use the landowner disclosure worksheet to prompt the landowner to disclose information about the property that may not be revealed in the title search. (See Subpart U, “Exhibits,” for a sample landowner disclosure worksheet.)
- (3) States are required to use the Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession” and addenda, which provides a mechanism for NRCS to verify and document that there are no apparent, visible activities or uses observed or disclosed that indicate the presence of unrecorded liens, leases, options, or other claims against the property that could impede the landowner’s ability to provide clear title to the property or NRCS ability to achieve program purposes. (See Subpart U, “Exhibits,” for a NRCS-LTP-27.)
- (4) States must complete the most current version of the Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession” form and addenda no more than 6 months prior to the easement closing date to verify that:
 - (i) NRCS has visually and physically inspected the property.
 - (ii) No work of labor has been performed or any materials furnished in connection with the making of any repairs or improvements to the property that would entitle any person to a lien upon the property for the work or labor performed or materials furnished.
 - (iii) There are no persons or entities (corporations, partnerships, etc.) which have any rights of possession or other interest in the property adverse to the rights of the landowner or the United States.
 - (iv) There are no vested or accrued water rights for mining, agricultural, manufacturing, or other purpose; nor any ditches or canals constructed by or being used on the property under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas or other minerals on the property; and there are no possessory rights now in existence owned or being actively exercised by any third party under any reservation contained in any patent or patents heretofore issued by the United States for the property except as identified on the certificate.
 - (v) There is no unauthorized occupancy of the land.
- (5) NRCS should ask the landowner whether there are any existing options or leases on the property for development of any type, including minerals, energy infrastructure, windmills, solar panels, transmission lines, or others. When the property is encumbered by an agricultural lease, NRCS should encourage the landowner to notify the lessee to work with FSA because enrollment in ACEP-WRE may result in payment issues. NRCS must request copies of any written leases or other agreements the landowner identifies during the landowner interviews used to complete the landowner disclosure worksheet or Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession” form and addenda or the.

NRCS should be in possession of these items prior to executing the agreement and must be in receipt of these items prior to closing. Unrecorded exceptions must be documented on the Form NRCS-LTP-23, “Certificate of Use and Consent.”

C. Identifying Recorded Exceptions

Recorded exceptions to the title will be identified in title search and underlying documents, usually provided by a closing agent. Each recorded exception to the title will have an associated underlying document. All title search and underlying documents must be evaluated by NRCS and a determination made as to the acceptability of each existing recorded exception to the title. States will determine acceptability based on the impact of these exceptions on NRCS’s ability to achieve the purposes of the program or the potential of these exceptions to interfere with the rights the United States is acquiring under the warranty easement deed or 30-year contract. States will document the determinations on Form NRCS-LTP-23, “Certificate of Use and Consent.”

D. Evaluation of Unrecorded and Recorded Exceptions

- (1) The “Certificate of Use and Consent” form must be completed for all easements and 30-year contracts. Each exception must be fully documented as either acceptable or required to be removed or subordinated, or other appropriate remedy. For each exception provide a description of the exception, the recommendation for addressing the exception, and the basis for the recommendation on the Form NRCS-LTP-23, “Certificate of Use and Consent” form. See subpart U’s title exception guide for further discussion on making these determinations.
- (2) Below are examples of recommendations, brief descriptions, and rationales that may appear on the “Certificate of Use and Consent” form:
 - (i) Acceptable: Existing 30-foot-wide power line right-of-way on southerly easement boundary, power line located in upland area, no long-term negative impacts anticipated to result from presence or maintenance of power line.
 - (ii) Must be subordinated or removed: Existing county flowage easement, allows county to remove all vegetation on 5 acres interior to easement, determination that vegetation removal would negatively impact ACEP-WRE habitat restoration.
 - (iii) Must be subordinated or removed: mortgages.
 - (iv) Must be removed: judgments, mechanics, or tax liens.
- (3) Landowners should be notified of unacceptable exceptions that must be removed or subordinated, leases that must be terminated, or options that must be cancelled early in the investigation processes to allow adequate time for landowners to achieve resolution prior to easement closing or contract execution.

528.125 Easement (Permanent and 30-year) Closing Process

A. General

Once NRCS has concluded eligibility determinations, surveys, easement compensation, investigations, and document preparation, States will prepare the preliminary title opinion request to submit to OGC. Easement closing may proceed only after a preliminary title opinion has been provided by OGC and closing instructions have been provided by NRCS. Easement closing will generally be executed through the use of a closing agent. NRCS will prepare the warranty easement deed and necessary exhibits for recordation. Once the easement has been recorded, NRCS must obtain and review the final title insurance policy and request a final title opinion from OGC. The easement acquisition process is complete when OGC issues its final title opinion to NRCS, confirming that title is vested in the United States.

Note: Each OGC office has its own procedures for issuing preliminary title opinions and final title opinions. Pursuant to 40 U.S.C. Section 3111, NRCS is not authorized to issue an easement payment until OGC has approved the sufficiency of title to the land for the purpose for which it is being acquired. Therefore, the procedures described in this section may be modified to meet OGC requirements.

B. Closing Agents

- (1) The term “closing agent” refers to the person or entity that prepares and provides the documents and services needed to complete the easement acquisition transaction. While in transactions between private parties the closing agent is typically not an agent of either party, in ACEP-WRE easement transactions between NRCS and the landowner, the closing agent is hired by NRCS and thus is considered a buyer’s agent. The closing agent may be a title company, escrow company, qualified private attorney, abstractor, or Federal employee familiar with the preparation of such evidence in the jurisdiction in which the lands are situated.
- (2) Closing agent services for easement transactions typically include the following:
 - (i) Providing title search and underlying documents
 - (ii) Providing a commitment to provide title insurance (title commitment binder or other acceptable document)
 - (iii) Obtaining signatures on “Subordination Agreement and Limited Lien Waiver,” Form AD-1158 or successor form or equivalent subordination document approved by OGC
 - (iv) Obtaining signatures on warranty easement deed
 - (v) Ensuring that exceptions are addressed according to NRCS and OGC instructions
 - (vi) Recording easements and other documents
 - (vii) Issuing the easement payment through an escrow account
 - (viii) Issuing the appropriate Internal Revenue Service (IRS) Form 1099 to the landowner for the easement transaction
 - (ix) Providing the ALTA closing protection letter and ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy
 - (x) Other functions, as necessary, or which may be required by State law or by the OGC title opinion to finalize the easement transaction, as detailed in the closing instructions provided by NRCS to the closing agent (see Subpart U, “Exhibits,” for examples of closing instructions)
- (3) Secure closing agent services through an appropriate procurement method and following proper contracting rules and procedures. NRCS may work with the OGC to develop a task order from a blanket purchase agreement or a statement of work for acquiring closing agent services (see Subpart U, “Exhibits,” for closing services scope of work and closing agent requirements). The task order must list all necessary closing agent responsibilities, qualifications, and conditions.
- (4) The State Conservationist will ensure that the closing agent is qualified and certified by law to perform the required services in the State in which the land lies, and that he or she is experienced, financially responsible, and reputable. Prior to issuing funds, the State Conservationist must obtain countersigned closing instructions in which the closing agent certifies these requirements are met.

C. Title Search Documents and Commitments

- (1) The closing agent will provide the title search, underlying documents, and a commitment to provide title insurance. Commitments, binders, preliminary reports, or other forms of preliminary title evidence are acceptable if they—
 - (i) Are customarily used in the location.

- (ii) Are acceptable to the reviewing attorney.
- (iii) Are issued by a qualified closing agent.
- (iv) Are based upon a preliminary title search.
- (iv) Commit the company to issue the approved American Land Title Association (ALTA) U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy.
- (2) The title search documents provide information necessary for NRCS to—
 - (i) Make eligibility determinations related to the impacts of title encumbrances.
 - (ii) Complete Form NRCS-LTP-23, “Certificate of Use and Consent.”
 - (iii) Identify actions the landowner must take to resolve exceptions and provide clear title.
 - (iv) Prepare any necessary Form AD-1158, “Subordination Agreement and Limited Lien Waiver,” or successor form.
 - (v) Prepare the warranty easement deed.

D. Title Insurance

- (1) Prior to closing, closing agents will be required to submit an ALTA closing protection letter or its equivalent (see Subpart U, “Exhibits,” for a sample closing protection letter).
- (2) An ALTA title insurance policy on the ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) will be acquired on all easements, including the ingress and egress routes. The closing agent must ensure that the ALTA title insurance policy—
 - (i) Includes only those title exceptions approved in advance by NRCS and OGC.
 - (ii) Is written for the full amount of the easement acquisition compensation identified in the warranty easement deed.
 - (iii) Identifies “The United States of America” as the insured party.
 - (iv) Declares that the interest being insured is an easement.
 - (iv) Is acquired from a source qualified and authorized by law to issue title insurance policies and approved by the State insurance commissioner or equivalent in the State in which the land is located.
- (3) Title insurance will be obtained through an appropriate procurement method and following proper contracting rules and procedures. Costs for title insurance will not exceed what is considered fair and reasonable.

E. Easement Preparation

- (1) The warranty easement deed, exhibits to the deed, and any applicable “Subordination and Limited Lien Waiver” (AD-1158 or successor form) will be prepared by NRCS and reviewed by OGC based on information received on the following:
 - (i) The title review process.
 - (ii) Form NRCS-LTP-23, “Certificate of Use and Consent.”
 - (iii) Exhibits A and B: easement boundary and ingress and egress legal surveys and description.
 - (iv) Exhibit C.—Part II, subpart E (subsurface resource restrictions) of the warranty easement deed, if applicable, to explain how oil, mineral, and gas resources may be extracted from the easement area such that adverse impacts to the habitat functions and values are avoided or minimized.
 - (v) Exhibit D.—Water rights and water uses, if applicable, will be investigated and any water rights necessary to accomplish the objectives of the easement will be identified, negotiated, and captured in exhibit D, to be recorded with the warranty easement deed.
 - (vi) Exhibit E.—Reserved grazing rights, if applicable, a grazing management plan will be developed and benefits, extents, and purposes will be captured in exhibit E, to be recorded with the warranty easement deed.
 - (vii) Basis for the easement compensation amount.

- (2) Special provisions may only be inserted in the warranty easement deed for unique legal issues, as determined necessary by the national ACEP-WRE manager and OGC in Washington, DC. Special provisions are not to be used for management or compatible uses.

F. Transmitting Documents to OGC for Preliminary Title Opinion (PTO)

- (1) 40 U.S.C. Section 3111 provides that public money may not be expended to purchase land or any interest in land unless the Attorney General (or his or her delegate) gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property. OGC is the delegate of the Attorney General for approving the sufficiency of title for easements acquired by USDA agencies. Title review, issues and topics are governed by U.S. Department of Justice regulations, DOJ Title Standards 2001, and applicable program requirements.
- (2) To comply with these requirements, upon completion of NRCS investigations, the documents as listed on the OGC “Preliminary Title Opinion Docket Checklist” will be assembled and transmitted to the regional OGC office for issuance of a preliminary title opinion (PTO). (See Subpart U, “Exhibits,” for OGC PTO checklist) The PTO reveals the current status of title, sets forth requirements, and documents OGC’s approval of title subject to the satisfaction of any requirements contained in the PTO and closing instructions. The regional OGC may further specify the format and any additional content necessary for their review.
- (3) The PTO issued by OGC will—
 - (i) List exceptions to clear title, if any, which must be resolved prior to recording the easement and making payment to the landowner.
 - (ii) Provide information for closing instructions.
 - (iii) Document that OGC approved the sufficiency of title to the land for the purpose for which the agency is acquiring the easement and authorize the agency to proceed with the acquisition subject to the satisfaction of the requirements contained in the PTO and closing instructions.
- (4) Only OGC has authority to provide a title opinion to NRCS. The transaction must be closed in accordance with the PTO and closing instructions. Only those title exceptions approved by OGC and NRCS may appear on the final policy of title insurance.

G. Issuing the Easement Payment and Perfecting the Easement

- (1) Easements must not be closed and no payments shall be made unless and until OGC issues a PTO and all requirements in the PTO are completed. NRCS will not expend WRE funds to acquire land or an interest in land unless the sufficiency of title has first been approved by OGC. To the extent that title exceptions arise prior to closing that were not considered by OGC in the PTO, those exceptions must be removed prior to closing. If necessary to address new title exceptions, States must seek an amended PTO from OGC.
- (2) Upon receipt of the PTO from OGC, NRCS will provide the closing instructions and PTO to the closing agent and copies for the landowner and the local NRCS office. Upon receipt of the PTO and closing instructions, the closing agent must provide NRCS with a completed and signed ALTA closing protection letter.
- (3) The APCE specifies that NRCS may provide payment to the landowner through an escrow account managed by NRCS’s selected closing agent. The landowner approves the payment to the escrow account through the execution of the APCE, and, therefore, a separate Form NRCS-CPA-1236, “Assignment of Payment,” does not need to be executed by the landowner. The landowner’s receipt of a copy of the closing instructions will notify the landowner of the identity of the closing agent selected to handle the easement transaction. The financial officer will identify the closing agent as the assignee for payment in FMML.

Note: If a landowner is executing a 1031 exchange, the closing agent should be identified as an alternate payee in FMML.

- (4) The closing agent will handle the funds in the escrow account in accordance with the OGC PTO and closing instructions provided by NRCS for ultimate disbursement of the proceeds to the landowner. The escrow account must be fully insured by the closing agent to ensure that Federal funds are not lost due to bank failure or otherwise.
- (5) NRCS will order the easement funds disbursed to the closing agent no more than 30 calendar days prior to scheduled easement closing. The closing agent may not hold the funds in escrow for more than 30 calendar days. If the easement cannot be closed within 30 calendar days, the closing agent must return the funds (and any accrued interest) to NRCS in accordance with NRCS instructions. When closing does not occur within 30 days of an advance payment, the State program manager should notify financial management staff immediately. Financial staff will follow current policy regarding cost recovery of an advance payment.
- (6) The easement payments must be issued through an escrow account unless State laws prohibit this method or the State, EPD, and the regional OGC office have agreed to an alternative method. In those cases, NRCS may issue the easement payment directly to the landowner. If NRCS issues the easement payment directly, NRCS must generate and issue the appropriate IRS-1099 forms or inform the landowners in writing that the landowner is responsible for correctly reporting any the easement compensation amount as identified in the warranty easement deed and any payments received, even if an IRS Form 1099 is not issued.
- (7) The closing agent will close the easement in accordance with the closing instructions.
- (8) Upon receipt of the recorded documents and final ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy from the closing agent, NRCS will execute Form NRCS-LTP-22, "Final Certificate of Inspection and Possession," to verify that the OGC title opinion and NRCS closing instructions were followed, verify that there are no new exceptions to the title, and determine the current ownership configuration.
- (9) NRCS will then transmit copies of the recorded easement documents, copies of the recorded releases, subordinations or other resolutions required by the PTO, a copy of the final title insurance policy, and Form NRCS-LTP-22, "Final Certificate of Inspection and Possession," and addenda to the OGC regional attorney. The OGC regional attorney will review the submitted documents and inform NRCS if additional documents are needed before issuing a final title opinion (FTO).
- (10) Payment will be processed to the closing agent for the closing services upon verification that all NRCS closing instructions and OGC title option instructions have been followed and the final ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy is correct.

H. Reporting Easement Actions with Farm Service Agency (FSA)

- (1) Once NRCS executes the APCE, NRCS will provide to the local and state FSA office in writing the information needed for FSA to track the 25-percent county cropland acreage cap of land enrolled in the ACEP-WRE and the Conservation Reserve Program. This information will include a map of the easement area and accompanying soils information if the easement area includes "subclass w" soils in the land capability classes IV through VIII. NRCS must ensure the 10-percent county cropland acreage cap on land enrolled in an ACEP-WRE easement is not exceeded. FSA county cropland records will be the basis for tracking ACEP-WRE acreage percentages. ACEP-WRE easements enrolled on noncropland acres or on cropland situated on exempted "subclass w" soils, as determined by NRCS, do not count against the 10-percent cropland limitation.
- (2) Once NRCS has recorded the warranty easement deed, it will notify the local and state FSA office of the date that the easement was recorded and the total acreage enrolled and will

document such notification in the case file. (See Subpart U, “Exhibits,” for sample FSA notification.)

- (3) The landowner is responsible for working with FSA to retire or transfer base acres associated with the easement area prior to closing the ACEP-WRE easement. In situations in which the landowner has the option to transfer base acres to another farm or tract, those landowners will work directly with FSA to facilitate the exchange.

528.126 Thirty-Year Contract Execution Process

A. Thirty-Year Contract Preparation

- (1) The actual 30-year contract document and exhibits will vary based on how the land is owned, specifically whether the lands are held in Tribal trust by the Bureau of Indian Affairs, are Tribal lands, allotted lands, or are individually held. States should contact the Easements Program Division (EPD) early in the enrollment process to determine the correct 30-year contract document needed based on the ownership of the individual enrollment.
- (2) States must assemble a 30-year contract package for each 30-year contract that will contain copies of the following documents and transmit the package to the EPD for review and approval:
 - (i) Unsigned 30-year contract and completed exhibits
 - (ii) Boundary description and map of the contract area and access route (GPS)
 - (iii) Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession” form and addenda with attachments
 - (iv) Landowner Disclosure Worksheet
 - (v) Form NRCS-LTP-23, “Certificate of Use and Consent”
 - (vi) Limited phase I that includes an “Environmental Records Search” report, the hazardous materials landowner interview, and the hazardous materials field inspection checklist
 - (vii) Title search or title status report with copies of underlying documents
 - (viii) Any appropriate title clearance documents or explanation of acceptance related to the title search report
 - (ix) The signed AECLU and any extension
- (3) The transmittal of the 30-year contract package to EPD should be completed at least 30 days prior to the anticipated date for signing the contract. Upon review of the 30-year contract package, the EPD will issue an acceptance and approval-to-pay notification.

B. Issuing the 30-year Contract

There is no title insurance policy obtained on 30-year contracts; therefore, an updated title search report must be obtained and reviewed by the State no more than 3 months prior to the landowner signing the 30-year contract. This is to ensure that no changes to the title have occurred since the initial report was reviewed that would impact NRCS’s entering into a 30-year contract on the property. If the updated title search reveals that unacceptable changes have occurred since the EPD approval was received, the new title report must be sent to EPD for review.

C. Issuing the 30-year Contract Payment

Once the landowner signs the 30-year contract, no Form AD-1161 is necessary. The signed 30-year contract will serve as authorization to issue payment to the landowner. Contract payment will be reduced by the amount identified in the final WRPO as the landowner’s share of the restoration costs. By signing the AECLU, the landowner agrees that NRCS will withhold from the contract payment an amount equivalent to 25 percent of the projected restoration costs.

528.127 Records Management

A. The following materials related to acquiring, monitoring and enforcing an ACEP-WRE easement must be maintained in a secure fireproof file area at the NRCS State office:

- (1) The title folder containing acquisition documents and acquisition-related correspondence, including, at a minimum, all application, eligibility determination, and waiver requests and findings, all items included in the OGC PTO docket package, the OGC title opinions, closing instructions, the final title insurance policy, a copy of the recorded deed and all exhibits, and any easement or related cost payment documents.
- (2) Documentation of easement compensation determination, including any GARC worksheets or if an individual appraisal was used, any agency-approved appraisal reports, administrative appraisal reviews, and technical appraisal review reports that must be retained in the official NRCS file associated with the easement.
- (3) Copies of monitoring records and any records generated as a result of violations or enforcement proceedings. See subpart P of the Common Easement Provisions Manual for more detail (440 CPM 527).

B. Easement acquisition, monitoring and enforcement materials must be retained in the NRCS State office for the duration of the easement. Do not send ACEP-WRE easement acquisition files to the archives, as monitoring and maintenance requires access to file documents for the life of the easement.

C. Copies of easement acquisition documents may be kept in the field office.

D. Cancelled files will be kept for the term of the Farm Bill under which they applied.